

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK SKILES,

Defendant.

NO. CR 11-05232 BHS

GOVERNMENT'S MOTIONS *IN LIMINE*
REGARDING CRIMINAL HISTORY OF
KENNETH GUSSONI AND CERTAIN
CIRCUMSTANCES OF SEARCH
WARRANT AT GUSSONI'S HOUSE

I. INTRODUCTION

The United States of America, by Jenny A. Durkan, United States Attorney for the Western District of Washington, and Roger Rogoff and Nicholas Brown, Assistant United States Attorneys for said District, submits this Motion in Limine.

Defendant Mark Skiles ("Defendant") is charged in the Indictment with one count of Conspiracy to Unlawfully Deal in Firearms and one count of Unlawfully Dealing Firearms. Trial is scheduled to begin on October 18, 2011, and is expected to last approximately three days.

II. BACKGROUND

On Friday, September 30, 2011, Defendant's former co-defendant, Kenneth Gussoni, pled guilty to one count of Conspiracy to Unlawfully Deal in Firearms. On October 5, 2011, Gussoni submitted to a proffer interview with government agents, wherein he described his participation in the charged offenses. He also talked about

1 Defendant Skiles' participation in the same offenses. The government decided to place
2 Gussoni on their witness list, and may call him as a witness at trial. A review of the
3 discovery produced to defense counsel revealed that only Gussoni's Washington criminal
4 history had been previously provided. The Government has since provided the complete
5 criminal history to the defense.

6 During the course of the investigation, Bureau of Alcohol, Tobacco, and Firearms
7 (ATF) Agents served a search warrant at Kenneth Gussoni's home. Inside the home, they
8 found more than 120 handguns and long guns, along with other evidence that inculpated
9 both Gussoni and Defendant Skiles. Upon entering Gussoni's home, agents did not
10 receive a response to their initial knock. They entered the house forcibly and were
11 immediately confronted by Gussoni's dog. Agents felt threatened by the dog, and thus
12 shot and killed it.

13 Gussoni has the following criminal history:

- 14 1. 1978 - Convictions for Receiving Stolen Property and Tampering with a
15 Vehicle;
- 16 2. 1993 - DUI and Hit and Run. Gussoni was arrested, but charges were
17 dismissed;
- 18 3. 2003 - Gussoni was sentenced to 12 months plus one day for a 1988
19 conviction for a Violation of the Uniform Controlled Substances Act; and
- 20 4. 2003 - Gussoni was sentenced to four months in jail for a 2002 conviction
21 of Possession of Stolen Property in the First Degree.

22 The government moves to exclude evidence of all of Gussoni's criminal history
23 except for the plea he entered in the current case and his 2002 conviction for Possession
24 of Stolen Property.

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1 **III. ARGUMENT**

2 **A. THE DEATH OF GUSSONI'S DOG**

3 Evidence is relevant if it tends to make a fact of consequence to the action more or
4 less likely. Fed.R.Evid. 401. Here, while tragic, the death of Gussoni's dog is simply not
5 relevant to any fact of consequence in this case. It makes neither the defense theory more
6 likely true, nor the prosecution's theory more likely true. It is simply a fact that would
7 serve to distract the jury. Thus, the Court should exclude any mention of it.

8 **B. GUSSONI'S 1977 CONVICTIONS**

9 Gussoni's convictions for Receiving Stolen Property and Tampering with a
10 Vehicle occurred more than 33 years ago. Evidence of a conviction is not admissible if a
11 period of more than ten years has elapsed since the date of the conviction. Fed.R.Evid
12 609(b). Only if the Court determines that the probative value of the conviction, supported
13 by specific facts and circumstances substantially outweighs its prejudicial effect, should
14 the court admit the evidence..

15 In this case, there is nothing about a property conviction that occurred 33 years ago
16 that has any impact on the instant case. As such, the Court should exclude any mention of
17 Defendant's criminal history from California in the 1970s.

18 **C. GUSSONI'S CONVICTION FOR A 1988 DRUG CHARGE & 2003 19 STOLEN PROPERTY CONVICTION**

20 For the purpose of attacking the character for truthfulness of a witness, evidence
21 that a witness other than an accused has been convicted of a crime shall be admitted,
22 subject to Rule 403, if the crime was punishable by death or imprisonment in excess of
23 one year under the law under which the witness was convicted, and the probative value of
24 admitting the evidence outweighs its prejudicial effect. Fed.R.Evid 609(a)(1)

25 In the present case, an there is no evidence as to the type of drug crime that
26 Gussoni committed, nor how conviction for this crime has anything to do with his honesty
27 or dishonesty in 2011. Evidence of this conviction is therefore inadmissible. However,
28 the Government agrees that Gussoni's 2003 Possession of Stolen Property conviction is

1 | admissible should the government call Gussoni as a witness.

2 | **D. GUSSONI'S DUI / HIT AND RUN ARREST IN 1993**

3 | These misdemeanors, which do not appear to be convictions, carry possible
4 | sentences of only one year. Thus, they are not admissible under the evidence rules.
5 | Moreover, they do not have anything to do with Gussoni's truthfulness.

6 | Evidence that any witness has been convicted of a crime shall be admitted
7 | regardless of the punishment, if it readily can be determined that establishing the elements
8 | of the crime required proof or admission of an act of dishonesty or false statement by the
9 | witness. Fed.R.Evid 609(a)(2). The elements of these crimes, if they were convictions,
10 | have nothing to do with dishonesty. Moreover, the crimes are more than 10 years old,
11 | and should be excluded. Fed.R.Evid 609(b). The court should exclude evidence of these
12 | arrests/charges.

13 | **IV. CONCLUSION**

14 | The government respectfully requests that the Court grant the government's
15 | motions to exclude evidence of the Gussoni's criminal history and the death of his dog.
16 | Based on Evidence Rules 609, 401 and 403, such evidence is inadmissible.

17 | DATED this 15th day of October, 2011.

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19 | Respectfully submitted,

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21 | JENNY A. DURKAN
22 | United States Attorney

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24 | _____
25 | ROGER ROGOFF
26 | NICHOLAS BROWN
27 | Assistant United States Attorneys
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